

Exhibit 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3
4

5 GOOGLE LLC,

6 Plaintiff,

7 vs.

No. 3:20-cv-06754-WHA

8 SONOS, INC.,

9 Defendant.
_____/

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12 -- ATTORNEYS' EYES ONLY SOURCE CODE --
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14 VIDEO-RECORDED DEPOSITION OF KEN MACKAY
15 IN HIS INDIVIDUAL CAPACITY AND AS A
16 FEDERAL RULE 30(B)(6) WITNESS FOR GOOGLE LLC

17 Remote Zoom Proceedings

18 Sunnyvale, California

19 Wednesday, January 25, 2023
20
21
22

23 REPORTED BY:

24 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

25 Pages 1 - 88

Job No. 5682406

Page 1

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14 Video-recorded deposition of KEN MACKAY, in his
15 individual capacity and as a Federal Rule 30(b)(6)
16 witness for Google LLC, taken on behalf of the Defendant,
17 Remote Zoom Proceedings from Sunnyvale, California,
18 beginning at 9:06 a.m. Pacific Standard Time and ending
19 at 11:37 a.m. Pacific Standard Time, on Wednesday,
20 January 25, 2023, before Leslie Rockwood Rosas, RPR,
21 Certified Shorthand Reporter No. 3462.
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24
25

Page 2

1 APPEARANCES:

2
3 FOR THE PLAINTIFF:

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21 Also Present:

22 Dr. Kevin Almeroth

23 Patrick Weston, Google Inhouse Counsel

24 Jeffrey Nichols, Videographer

25
Page 3

1 expert for Sonos in this matter as well.

2 MR. KAPLAN: This is Marc Kaplan from Quinn
3 Emanuel Urquhart & Sullivan on behalf of Google. And
4 with me today is Patrick Weston from Google.

5 THE VIDEOGRAPHER: Thank you. 09:08:22

6 Will the court reporter please swear in the
7 witness and then counsel may proceed.

8 THE REPORTER: Thank you.

9 Mr. MacKay, if you would raise your right hand,
10 please, I'll swear you in. Thank you.

11 You do solemnly state that the evidence you
12 shall give in this matter shall be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE REPORTER: Thank you, sir. 09:08:42

16 You may proceed, Counsel.

17

18 EXAMINATION

19 BY MR. SHEA:

20 Q. Good morning, Mr. MacKay. Good to speak with 09:08:45
21 you again.

22 A. Good morning.

23 Q. So what I would like to do is start by directing
24 you right to the primary file that I'd like to chat with
25 you about today, and it's going to be a source code file 09:08:58

Page 7

ATTORNEYS' EYES ONLY SOURCE CODE

■ [REDACTED] ■
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

5 When the player runs -- when the player makes a 10:40:04
6 call to the StopCurrentApp() function, and the AddGroup()
7 function in this scenario, what will happen to the
8 behavior of the player?

9 [REDACTED] [REDACTED]

10 THE WITNESS: So specifically when you call 10:40:38
11 StopCurrentApp(), since there's no current app running,
12 there's -- there's nothing to stop. And then when
13 AddGroup() is called, it will create the multizone group
14 structure for the group.

15 And then farther down in RefreshDeviceGroups(), 10:40:59
16 it will start the leader election process for that
17 device.

18 And I think -- I forget, but somewhere in that
19 process, we also update the MD&S record for the device to
20 indicate that's part of the group. So it becomes 10:41:21
21 discoverable.

22 ■ [REDACTED] ■ [REDACTED]

■ [REDACTED]

24 Is -- with respect to the behavior of the player
25 itself, I think you said that because it wasn't engaging 10:41:42

1 in playback before it received the join group message, it
2 would remain in the same state after it receives that
3 message; is that right?

4 [REDACTED] [REDACTED]

5 THE WITNESS: So if there is no current app to 10:42:00
6 stop, then that's -- it will -- there will still be no
7 current app after StopCurrentApp() runs.

8 Q. BY MR. SHEA: Right.

9 So in this scenario, then, do I understand
10 correctly that the player will effectively behave in the 10:42:16
11 same way that it would have behaved in prior firmware
12 versions of -- of the software?

13 A. Prior to adding the StopCurrentApp() call?

14 Q. Yeah.

15 [REDACTED] [REDACTED] 10:42:38

16 THE WITNESS: Well, it will still call
17 StopCurrentApp(), but it -- other than that, it won't do
18 anything differently.

19 Q. BY MR. SHEA: Right. It's not going to -- the
20 StopCurrentApp() function in this case is not going to 10:42:56
21 cause any change to -- to the operational behavior of the
22 player; correct?

23 [REDACTED] [REDACTED]

24 THE WITNESS: Yes.

25 Q. BY MR. SHEA: And then in this scenario we've 10:43:12

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Q. BY MR. SHEA: Do you know, are there still some

11:16:08

11

devices today that -- that are running a firmware version

12

that doesn't -- that wasn't compiled based on the changes

13

you made?

14

15

THE WITNESS: So we have a large number of

11:16:22

16

devices that don't receive updates, anymore. And so

17

those wouldn't have received an update that contains

18

those changes.

19

Q. BY MR. SHEA: Can you give me an example of what

20

that -- what kind of device that might be that wouldn't

11:16:39

21

receive the updates?

22

A. So, for example, the -- the large speaker that

23

we made. I forget what we called it.

24

Q. The Home Max?

25

A. Yeah. That one is not receiving updates,

11:16:56

ATTORNEYS' EYES ONLY SOURCE CODE

1 anymore.

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Q. BY MR. SHEA: And so in that case, if -- if a
user were to add a Home Max to a speaker group today, the
StopCurrentApp() function would not run on that player as
part of the RefreshDeviceGroups()?

11:17:19

THE WITNESS: Correct.

11:18:43

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3
4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 26th day of January, 2023.

22
23
24 

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462